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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 121

ROGER EVIN JONES,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPELLANT'S SUPPLEMENTAL MEMORANDUM

MORRIS LAVINE,
Attorney for Appellant.

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APPELLANT'S SUPPLEMENTAL MEMORANDUM

To the Honorable Harlan F. Stone, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices Thereof:

Permission is respectfully requested to file this supplemental memorandum brief. Since the petition for appeal was filed in this Honorable Court this Court has handed down the case of *Feldman* v. *United States,* 88 L. Ed. 1046, in which the question arose as to whether testimony given by an accused in a State court, and the State grants immunity in respect thereto, can be used against him in a Federal court.

The majority opinion, while holding that it can, nevertheless said that the governments of the States and the general government "are separate and distinct sovereignties, acting separately and independently of each other's spheres and the sphere of action appropriate to the United

States is as far beyond the reach of judicial process issued by a State judge or a State court as if the line of division was traced by landmarks and monuments visible to the eye." (Quoting from *Ponzi* v. *Fessenden*, 258 U. S. 254, 66 L. Ed. 607.)

In the *Jones* case at bar the Securities and Exchange Commission, under the compulsion of its subpoena, compelled Jones to bring in his books, papers and records before the Commission. Then the district attorney of Los Angeles proceeded to subpoena those books, papers and records from the Securities and Exchange Commission and had the Commission turn those documents over to the County Grand Jury of Los Angeles without ever returning them to Jones (R. 2 to 46). Thereafter these books, papers and records were all used in evidence against Jones in the trial which resulted in the present conviction. Had those books, papers and records been returned to Jones after the government had concluded with them, then Jones would have had a right, if he had been subpoenaed, together with these documents, to have claimed certain privileges and immunities under the laws of the State of California.

The question raised in the trial court, under a series of objections (R. 8), was that the government had no right to turn these documents over to the State and the State had no right to use them against Jones in his criminal trial after the government had gotten them, presumptively for one purpose, namely, for its own use, under a law which compelled Jones to bring them in.

Under the doctrines enunciated in the *Feldman* case it is respectfully submitted that this procedure violated the defendant's right of due process of law and his privileges and immunities guaranteed by the Fourteenth Amendment to the Constitution of the United States. In the *Feldman* case this Court said: "If a Federal agency were to use a

State court as an instrument for compelling disclosures for Federal purposes the doctrine of the *Byers* case, 273 U. S. 28, 71 L. Ed. 520, as well as that of *McNabb* v. *United States*, 318 U. S. 332, 87 L. Ed. 819, afford adequate resources against such an evasive disregard of the privileges against self-incrimination."

It is respectfully submitted that in this case a State agency used a Federal agency to compel disclosures for State purposes, and that for this reason this Court should take jurisdiction and decide this important question.

Appended hereto are quotations from the record in the trial of the *Jones* case which showed that a State agency used a Federal agency as an instrument for compelling disclosure for State purposes. The question raised then is whether this can be done. Under the Corporate Securities Act of the State of California, had the Commissioner of Corporations of the State of California compelled the production of the books in place of the Securities and Exchange Commission, the defendant could have claimed statutory immunity. (Act 3814, General Laws of California, Deering's Code as amended, Section 23). This section reads as follows:

> "*Statutes governing witnesses.* All the provisions of Chapter II of Title III of Part IV of the Code of Civil Procedure, relating to the means of production of evidence out of court, shall be applicable to any examination, investigation, or hearing under this act. No person shall be excused from testifying or from producing any book, document, or other thing under his control upon any such examination, audit, investigation, or hearing upon the ground that his testimony, or the book, document or other thing required of him, may tend to incriminate him, or may have a tendency to subject him to punishment for a felony, or to a penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or

on account of any act, transaction, matter, or thing concerning which he shall have been so compelled to testify under oath; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury if committed by him in his testimony. The authority to make or conduct any such examination, audit, investigation or hearing, including the authority to administer oaths, and to subpena witnesses and take their testimony, may be delegated by the commissioner to any employee of the Division of Corporations appointed by him for that purpose. Such appointment shall be made by an instrument in writing, signed by the commissioner under his official seal, and upon such examination, audit, investigation or hearing, the same shall be produced by such employee of the Division of Corporations at any time upon demand therefor. (Amended by Stats. 1939, ch. 405.)"

The records having been secured by the Federal agency, Jones was powerless to claim his privileges and immunities granted to him under the State statute. This procedure therefore denied him the privileges and immunities of due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States. The question is one of importance in the relationship in Federal and State agencies and Federal and State immunity, and the case of *Feldman* v. *United States, supra,* would implicitly seem to hold that such procedure would not be tolerated if a Federal agency used it, and we respectfully submit that it should not be tolerated when a State agency used it nor should the evidence thus gained thereby be admitted.[1]

Respectfully submitted,

MORRIS LAVINE,
Attorney for Appellant.

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[1] In respect to immunity under the Corporate Securities Act of California, see *People* v. *White,* 124 Cal. App. 548.

The following is the testimony of James M. Evans, of the Securities and Exchange Commission, in the Superior Court of Los Angeles, most of which is in narrative form for the sake of brevity (R. 2-44).

Los Angeles, California,
Wednesday, October 28, 1942, 9:30 A. M.

The Court: People against Jones.

Mr. Frampton: The People are ready.

Mr. Lavine: We object to the jurisdiction of the court, as far as the defendant is concerned, to proceed to trial on the ground that the grand jury transcript, on which the trial is predicted, and that the proceedings which were had before the grand jury reveal the following having taken place on May 5, 1942.

JAMES M. EVANS was called and he testified as follows: It is very short and I will read it.

"Examination.

By Mr. Frampton:

Q. Your name is James M. Evans?

A. Yes.

Q. And your residence address is what?

A. 371 Rosita Court, Pasadena.

Q. You are connected with the local office of the Securities and Exchange Commission?

A. Yes, in the capacity of attorney.

Q. Pursuant to a subpena duces tecum, you have produced certain books and records, have you not?

A. Yes, sir.

Q. The books of R. E. Jones & Company and the Caledonia Development Company?

A. Yes.

Q. Those books were delivered to you pursuant to a subpena duces tecum issued by your Commission?

A. Yes.

Q. Who delivered those books to you personally?

A. R. E. Jones and his attorney, E. O. Leake.

Mr. Frampton: At this time I offer these books in evidence, the general ledger of R. E. Jones & Company, as Exhibit 1; general records of R. E. Jones & Company, as Exhibit 2; customers accounts receivable, R. E. Jones & Company, as Exhibit 3; general ledger of the Caledonia Development Company, as Exhibit 4; and the general record of the Caledonia Development Company, as Exhibit 5.

Are there any questions?

That is all, thank you, Mr. Evans."

Now, the grand jury record further reveals that there was testimony by Leonard K. Link, an auditor, employed by the company, based upon those records.

The Court: Employed by what company?

Mr. Lavine: Employed by R. E. Jones & Company, and that the testimony of Mr. Link is contained, starting on page 248 of the grand jury transcript, and he analyzes various things in the records and files, which were also produced under a subpena duces tecum to the Securities and Exchange Commission after the Securities and Exchange Commission had secured these books on a subpena duces tecum.

Now, I understand that it is a fact that Mr. Frampton asked the Securities and Exchange Commission to secure these books and records. Is that correct, Mr. Frampton?

Mr. Frampton: I will offer the stipulation that a subpena duces tecum was duly and regularly issued by the grand jury of Los Angeles County directed to the manager of the local office of the Securities and Exchange Commission, directing him to produce the books and records of R. E. Jones & Company, incorporated, and the Caledonia Development Company. That in response to that subpena, that the witness, Mr. Evans, who is connected with the local office of the Securities and Exchange Commission produced before the grand jury the books and records of those companies, respectively, referred to, and that they were offered in evidence before the grand jury of Los Angeles County.

Mr. Lavine: I accept that stipulation.

(Rep. Tr. p. 2 line 1 to p. 4 line 16.)

* * * * * * *

Mr. Lavine: Now, if your Honor please, under the Securities Exchange Act of 1934, Section 21, Subdivision (d), provides as follows:

"No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

Now, we have here a statute of the Securities and Exchange Commission under which Mr. Jones was compelled by reason of the subpena to produce certain documentary evidence before the Securities and Exchange Commission. That evidence was produced. It was then taken from that Commission to the County grand jury under a subpena issued by Mr. Frampton on the Commission. Now, it seems to me, your Honor, that the provisions of that Section are broad enough to protect the person under the situation from being compelled to produce the documents which he did produce under the compulsion of the subpena, and then to use them as a basis for an indictment in the State court in violation of that Section as set forth, and I submit that we object, therefore, to the jurisdiction of the court to proceed for the reasons set forth.

The leading case on the subject of immunity under the Federal courts, of course, is Counselman *v.* Hitchcock, in 142 U. S. 547. We have certain immunity statutes in the State. The *Rittenhouse* case, which was passed on by the Supreme Court, analyzes the immunity statute in connection

with Section 334 of the Penal Code of California. We have other immunity statute before our own Corporation Commissioner.

Now, another question that arises is can the People of the State of California do indirectly what could not be done directly? In other words, after the Securities and Exchange Commission secures the documents and records in this case under the compulsion of a subpena, could the State then come over and subpena a Federal official and do indirectly what they could not do directly if they had subpenaed Mr. Jones and the corporation officials directly, and I submit the matter to your Honor.

(Rep. Tr. p. 4 line 26 to p. 6 line 24.)

* * * * * * *

The Court: The objection is overruled. Are you ready to proceed?

Mr. Lavine: Ready, subject to that objection, and to the further objection that to try this defendant under the proceedings here, as a result of the claimed immunity, would be violative of the 14th Amendment to the Constitution of the United States * * * (p. 8 lines 12-18).

The Court: Overruled. Call a jury, Mr. Clerk.

(p. 8 line 23.)

James M. Evans, called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Frampton:

I have some official connection with the Securities and Exchange Commission. I am employed by the Securities and Exchange Commission, an agency of the United States Government. I had such a connection in the year 1941 and the early part of 1942.

My office is located at 1737 Federal Building, Los Angeles; it is called the Los Angeles Branch Office. I am a trial attorney and examining attorney for that office.

In the latter part of 1941 or the early part of 1942 the Securities and Exchange Commission was officially making an investigation of the business and affairs of R. E. Jones & Company, Incorporated, a corporation, also Caledonia Development Company, a corporation.

Mr. Lavine: Objected to as incompetent, irrelevant and immaterial and not within the issues here.

The Court: It is preliminary, apparently; overruled.

By the witness:

In connection with that investigation I caused to be issued in the due course of the investigation a subpena of the Securities and Exchange Commission, duces tecum, for the production of certain books and records of R. E. Jones & Company, Incorporated, a corporation.

(Here the Court overruled an objection by Mr. Lavine as irrelevant, immaterial and incompetent.)

By the witness:

I also caused to be issued a similar subpena for the books and records of the Caledonia Development Company, a corporation.

(Objection by Mr. Lavine as irrelevant, incompetent and immaterial, overruled by the Court.)

By the witness:

I do not have the original of those subpenas. My associate, Mr. O'Brien, who is in the court room, has them. The first document (witness is shown a sheaf of documents) is a duplicate or carbon copy of the original subpena directed to R. E. Jones & Company, requiring the production of books and records before the Securities and Exchange Commission at its office at 1737 Federal Building, Los Angeles, on March 12, 1942, at 2:30 P. M., in the matter of the United Bottling & Distributing Company and A. A. Slater and Company.

As I have stated, this document is a duplicate copy of the original which was served upon Mr. Jones, Mr. R. E. Jones, by me on March 11, 1942. That document calls for the books and records of R. E. Jones & Company. It does not call for any personal records of Roger E. Jones.

I left the original with Mr. Jones, and this copy is a part of our office files. It is not a public record, but it is an official record of the Government.

I have here a duplicate or a carbon copy of a subpena directed to Caledonia Development Company, requiring that company to produce its books and records at Room 1737 United States Post Office and Court House in Los Angeles, at the office of the Securities and Exchange Commission, on March 12, 1942, at 2:30 P. M., in the matter of United Bottling & Distributing Company and A. A. Slater & Company. The original of this subpena was served by me upon Mr. R. E. Jones on March 11, 1942. He is one and the same person as this defendant. The last document which I have read is an official record of the Securities and Exchange Commission. I have caused copies of those two subpenas to be made. These two documents to which you direct my attention are copies of the original subpenas now in my file.

The third document here is a subpena addressed to Roger E. Jones, requiring his attendance at Room 1737 United States Post Office and Court House of Los Angeles upon March 12, 1942, to testify in the matter of United Bottling & Distributing Company and A. A. Slater and Company. This document is a duplicate or carbon copy of the original which I served upon Mr. Jones personally in the office of his attorney on March 11, 1942.

There is a fourth document, which is also a subpena directed to Roger E. Jones, requiring him to appear at Room 1737 United States Post Office and Court House on March 12, 1942, at 2:30 P. M., to testify in the matter of R. E. Jones and Company and Caledonia Development Company. The original of this subpena was served by me upon Mr. Jones personally on March 11, 1942.

Mr. Jones and his attorney, at that time a Mr. E. O. Leake, appeared at our office on March 12, 1942, at about

2:30 in the afternoon. They brought with them and delivered to us four books and ledgers.

(The subpena directed to R. E. Jones and Company was offered and received in evidence as People's Exhibit 2 for identification.)

(The subpena directed to Caledonia Development Company was offered and received in evidence as People's Exhibit 3.)

(The subpena directed to Roger E. Jones in the matter of United Bottling and Distributing Company, et al., was offered and received in evidence as Exhibit 4.)

(The subpena directed to Roger E. Jones in the matter of R. E. Jones and Company, et al., was offered and received in evidence as Exhibit 5.)

(A book, referred to by Mr. Frampton for the purposes of description only as the general records of R. E. Jones and Company, Incorporated, was offered by him and received for identification only as People's Exhibit 6.)

By the witness:

This book to which you direct my attention, People's Exhibit 6 for identification, appears to be one of the books delivered to me after the service of the subpenas on Mr. Jones. I have no personal knowledge of the contents of the book, and I am not able to positively identify the book. However, it appears to be one of the books produced by Mr. Jones and Mr. Leake.

(A book, which Mr. Frampton referred to for the purposes of identification only as the general ledger of R. E. Jones & Company, Incorporated, was offered by him and received in evidence for identification only as People's Exhibit 7.)

By the witness:

People's Exhibit 7 appears to be one of the books delivered to my office after the service of the subpenas.

(A book, which Mr. Frampton referred to for the purposes of describing it only as a customers' accounts receivable of R. E. Jones & Company was offered by him and received in evidence as Exhibit 8 for identification.)

By the witness:

That book, Exhibit 8, appears to have been one of the books delivered to my office after the service of this subpena.

(A book, which Mr. Frampton described for the purposes of identification only as the general ledger of the Caledonia Development Company was offered and received in evidence as Exhibit 9 for identification.)

By the witness:

Exhibit 9 for identification appears to have been one of the books that was delivered to my office in response to this subpena.

(A book, which Mr. Frampton described for the purposes of reference only as the general records of Caledonia Development Company was offered by him and received in evidence as Exhibit 10 for identification.)

By the witness:

Exhibit 10 for identification appears to be one of the books delivered to my office after the service of the subpena.

After those books were in my possession or in the possession of the employes working under my supervision and direction, I received a subpena from the Los Angeles County grand jury in connection with these books, a subpena duces tecum; it was served upon Mr. Charles R. Burr, who is supervisor of our Los Angeles office, a subpena from the County grand jury of Los Angeles County, requiring the production of such books. In response to that subpena I produced before the Los Angeles County grand jury the same books that I had theretofore received from this defendant. Mr. Jones at no time claimed any privilege against

self-incrimination in connection with the service of these subpenas upon him.

Some time prior to the service of the subpena, I would say in the month of February, 1942, I had attempted to locate Mr. Jones, and had telephone conversations with his attorney, Mr. E. O. Leake. I advised Mr. Leake that I was desirous——

Mr. Lavine: I object to this as hearsay.

The Court: The objection is sustained.

A. As a result of telephone conferences with Mr. Leake——

Mr. Lavine: I object to that as a conclusion of the witness, whether it was as a result.

The Court: Following telephone conferences with Mr. Leake, is that what you mean?

A. Very well. I talked on the telephone to Mr. Leake. I also talked on the telephone with Mr. Jones of Downeyville, California, and Mr. Jones and his attorney stated that within a few days Mr. Jones would be in Los Angeles and he at that time stated that he would meet with us and we could have our conference. Subsequently I received notice that we could meet with Mr. Jones at the office of his attorney, Mr. Leake, in the Chester Williams Building. That was at about 11:00 o'clock a. m., on March 11, 1942. Mr. O'Brien of our office and myself went to the office of Mr. Leake in the Chester Williams Building on Fifth Street, Los Angeles, and there I met for the first time Mr. Jones, and we conferred for approximately an hour in Mr. Leake's office. All of my conversation with Mr. Jones was in the presence of Mr. Leake. At the outset of the talk, after introductions were had, I advised Mr. Jones, directing my interrogation and my statement to him, that he need not make any statement or answer any questions which would tend to incriminate him or subject him to a fine, penalty or forfeiture. I then asked him if he understood that and Mr. Jones looked at his attorney and Mr. Leake merely smiled and made a remark to the effect "That

we know all about that." That was the occasion of my having served Mr. Jones with the subpoena.

Four of the books were delivered to us on the following day. Upon examination of the books by Mr. O'Brien he stated that there was no general——

Mr. Lavine: I object to that as hearsay.

The Court: Sustained.

The Witness: After an examination of the books it was determined that there was no general ledger.

Mr. Lavine: I object to that as a conclusion of the witness and move to strike the answer.

By Mr. Frampton:

Q. After you examined the first group of books that were brought to your office did you call anyone in connection with any additional books?

A. The call was made to Mr. Leake.

Mr. Lavine: I object to that as not responsive. The question was whether he did it.

The Court: Isn't it just a little bit technical now?

Mr. Lavine: It is, your Honor.

The Court: The answer is stricken. Did you make the phone call to Mr. Leake, yes or no?

A. I did not.

By Mr. Frampton:

Q. Was the call made in your presence?

A. It was not.

There were more books produced; on March 13th the general ledger for R. E. Jones & Company was brought in to our office.

The conversation that I have related was the only admonition or warning that I ever made to Mr. Jones on the subject of his privilege or immunity from testifying or producing any records against him. There was no claim of privilege or immunity at the time that Mr. Jones in the presence of his attorney delivered the books to my office. There was no claim made by Mr. Jones or by Mr. Leake, his attorney.

Cross-examination.

By Mr. Lavine:

Those books came into our possession as a result of our subpoena.

Q. There was no duty on your part to turn them over to anyone, was there?

Mr. Frampton: That is objected to on the ground that it calls for an opinion or conclusion of the witness and is immaterial.

Mr. Lavine: He knows whether they are in *custodia legis* or not.

* * * * * * *

The Court: The objection is sustained.

By Mr. Lavine:

Q. You are an attorney at law, aren't you?

The Witness: Yes, sir.

Q. You are in charge of the records of the Los Angeles office and those records came into your possession as a result of your being in charge of the Los Angeles office, didn't they?

A. I am not in charge of the office.

Q. You were in charge of these particular records, were you not?

A. I was working upon the investigation through which these records were obtained.

Q. You knew as a matter of your own knowledge, did you not, that there was no duty or no requirement as a matter of law for you to turn these records over to anyone?

Mr. Frampton: That is objected to on the ground that it is not a proper statement of law and furthermore calls for a statement of a conclusion or opinion of this witness.

The Court: Sustained.

By Mr. Lavine:

Q. You knew you did not have to turn these records over to anyone, didn't you?

Mr. Frampton: That is objected to on the ground it calls for a conclusion or opinion of the witness.

Mr. Lavine: He knew.

Mr. Frampton: Upon the further ground that it is immaterial.

The Court: The objection is sustained.

By the Witness:

Four of these books came into our office on March the 12th and the fifth one came on March the 13th. Mr. Jones and his attorney carried the books in. I don't recall specifically if both of them carried them. They turned them over to me. There was no concealment about it. They obeyed the subpoena that I had issued for them. It was only after calling their attention that the fifth one, the general ledger had not been delivered that it was then produced, but it was produced.

I don't recall making a statement to Mr. Leake at that time that there was nothing being investigated as far as Mr. Jones was concerned.

I recall the conversation I had with Mr. Leake when I came into his office and he said, "Now, is Mr. Jones or his company under any investigation whatsoever?" I recall advising Mr. Leake that the investigation by the Los Angeles office was being instigated and was being made at that time at the request of our Chicago office. I don't recall making the statement at that time that Mr. Jones and Jones & Company were not under investigation.

I could not say when these subpoenas were written up. I can tell exactly whether they were written up at the same time or on different dates by referring to the subpoena. I have no independent recollection.

It is correct that our first subpoena here specifies that we ask Jones & Company to appear before our Commission to testify in the matter of United Bottling and Distributing Company and A. A. Slater & Company. I would not say that it was our first concern. It was one of our concerns.

I decline to answer the question as to whether previous to that time I had been asked by anyone else than the

Chicago office to make the investigation, upon the ground that the investigation of the Government is confidential.

By Mr. Lavine:

Q. You have here testified to some matters. Do you now claim your privilege as to these matters that I am about to ask you with reference to any other person? Let me ask you this question, and if you feel that it is something you want to claim you- privilege I recognize the law in that respect. Were you requested by the District Attorney's office of Los Angeles County to make any investigation in this matter?

A. In what matter?

Q. In the matter of R. E. Jones or R. E. Jones & Company or the United Bottling and Distributing Company and A. A. Slater & Company?

A. The investigation of the Securities and Exchange Commission was made at its own instance and not at the instance of the District Attorney here.

Q. That does not answer my question.

Mr. Frampton: I submit that it does.

By Mr. Lavine:

Q. That is not my question. I asked you if you had been asked by the District Attorney's office, regardless of whether you made an investigation at your own instance or not, had you been asked by the District Attorney's office prior to that time to make such an investigation?

A. Prior to what time?

Q. Prior to March 12, 1942?

A. To my knowledge the District Attorney of Los Angeles County never requested us to make an investigation.

Q. Did the District Attorney's office of Los Angeles County request you to get these books and records for it?

A. No, they did not.

Q. At no time?

A. The books were gotten at the instance of the Securities and Exchange Commission under its own subpoena.

Q. I recognize that you issued your own subpoena, but had the District Attorney's office of Los Angeles County requested you to issue that subpoena?

A. I don't recall, but it would be immaterial whether it did, because we would issue only at the instance of our own Commission, and not at the instance of any one else.

Q. It is material to my inquiry, Mr. Evans, so I would appreciate if you would tell me whether you did receive such a request for the issuance of the subpoena by any one in the Los Angeles County District Attorney's office prior to March 12, 1942.

A. I don't recall such a request having been made on our Commission.

Q. Was it made to you?

A. It was not made to me.

Q. Did you have any conference with anybody in the Los Angeles County District Attorney's office with reference to the securing of these books and records?

Mr. Frampton: That is objected to on the ground that it is wholly immaterial to any issue in this case.

The Court: The objection is sustained.

Mr. Lavine: The People have opened it up, your Honor, as to the securing of those books and records under the Securities and Exchange Act, and I think I am entitled to go into the whole transaction.

The Court: Now, having expressed yourself, and the Court having ruled, we are ready for the next question.

By Mr. Lavine:

Q. Now, prior to March 2, 1942,—prior to March 2, 1942, did you go to the Los Angeles County District Attorney's office in reference to any investigation in this case?

Mr. Frampton: Objected to on the ground that it is wholly immaterial.

The Court: Oh, it is, unless it might go solely and singly to the question of bias, interest, prejudice, malice, feeling, if any,——

Mr. Frampton: If that is what he is after, I will withdraw my objection.

The Court: And for that limited purpose only the Court will permit an answer. Read the question, Mr. Reporter.

(Question read.)

The Court: Will you answer that?

A. I don't recall the specific dates. I know I had numerous telephone conversations or frequent conversations with Mr. Frampton, as I knew that his office was investigating the whisky matters, or this particular matter, and he knew that the Federal Government was also conducting similar investigations.

By Mr. Lavine:

Q. Do you remember when you had your first conversation with him about it, what month?

A. No, I don't recall.

Q. Your investigation resulted in no action whatsoever in the Los Angeles courts against Mr. Jones, did it?

A. I decline to answer that, Mr. Lavine.

Q. You know as a matter of public record. If it did there is a public record on it, and if it didn't that there is no public record on it.

Mr. Frampton: We will object to it on the further ground that it is immaterial. He stated that the investigation was at the instance of Chicago office, and not this office.

The Court: The objection is sustained. It is immaterial, anyhow.

By Mr. Lavine:

Q. And, in any event, on what date did you turn these books over to Mr. Frampton?

Mr. Frampton: Objected to on the ground that it assumes a fact not in evidence.

Mr. Lavine: That is correct.

By Mr. Lavine:

Q. What date did you turn these books over to the grand jury on Mr. Frampton's subpoena, the subpena issued by the County grand jury by Mr. Frampton? I will get it all in.

Mr. Frampton: That is objected to on the ground that it is wholly immaterial and assumes a fact not in evidence.

The Court: The objection is sustained.

By Mr. Lavine:

Q. Do you remember what date you brought the books over here to the Hall of Justice?

A. Yes, I recall the date.

Q. What date was that?

A. The books were brought over here by me on May the 5th, 1942.

Our office received a letter from Mr. Leake, the letter dated May the 21st, I believe, and received by our office on May the 22nd, 1942, in which he demanded a return of the five books. As to whether in that letter he stated to me that I had desired to check the books with reference to the transactions of the United Bottling Company of Chicago, I don't have a copy of the letter with me.

We had the books from March 12th until May 5th. Those books had been left with me by Mr. Leake and Mr. Jones personally. I don't recall making the time limit of three or four days that we would return those books to him. I recall stating to Mr. Leake that we expected to get through with the books as quickly as possible, and would then return them to him. After that the books were never returned to Mr. Leake, as I advised him we had been served with the grand jury subpena. I didn't advise him of that until after he wrote to me and asked me about them on May 21st. I advised Mr. Leake by telephone on April the 28th that our office had been served with a grand jury subpena, and that the books would be retained by us until I received further notice from my superiors, and then on May the 4th I advised the R. E. Jones & Company and Caledonia Development Company, in care of Mr. Leake, that I had been instructed by my superiors to respond to the grand jury subpena and deliver the books to the grand jury on May the 5th.

I have never made any demand upon the District Attorney's office of Los Angeles County for the return of those books. A receipt was given for the four books delivered on March the 12th,—to Mr. Leake and Mr. Jones. There

was one delivered on the subsequent day and I was not there at the time it was brought into the office; possibly the young lady in the reception room gave a receipt for it; I don't know.

Redirect examination.

By Mr. Frampton:

There appears to be missing from Exhibit 2 the document consisting of four paragraphs setting forth the books and records requested to be delivered by the subpoena.

(With the Court's permission Mr. Frampton reads from the original subpoena the books and records called for:)

"All journals and books of original entry of R. E. Jones and Company, commonly designated as journals, cash books, purchase and sales books, containing entries made from April 1, 1939, to March 1, 1942, in respect to transactions occurring within said period and showing receipts and disbursements of R. E. Jones and Company occurring during said period.

"All statements of account between R. E. Jones and Company and United Bottling and Distributing Company and A. A. Slater and Company, which statements will reflect the amount and size of said accounts during the period from April 1, 1939, to March 1, 1942.

"All customers ledgers or lists containing the names to whom or from whom whiskey warehouse receipts and/or barrels of whiskey were purchased or sold by R. E. Jones and Company and all customers ledgers, lists or records containing the certificate numbers and serial numbers of barrels of whiskey purchased from R. E. Jones and Company and/or sold or delivered to United Bottling and Distributing Company or A. A. Slater and Company or John Factor, from April 1, 1939, to March 1, 1942.

"All original correspondence or copies thereof between R. E. Jones and Company or its officers or employees acting therefor and United Bottling and Distributing Company, A. A. Slater and Company or John Factor."

By the witness:

That is the description of the records that were required.

Recross-examination.

By Mr. Lavine:

Mr. Jones and Mr. Leake appeared with the four volumes a few minutes before 2:30, the time specified in the subpoena. The fifth record was delivered the following day at about noon, I believe. They brought them right into my office in the Federal Building. I didn't have to send any messenger or a delivery boy down after them.

In talking to Mr. Leake and Mr. Jones, I don't recall stating that it would be an accommodation to my Commission if I could receive these books and keep them in my office for a while, for a matter of days or longer. I recall that I stated to Mr. Leake that our Mr. O'Brien, who is associated with me upon the investigation, was an auditor and an accountant, that he was then engaged upon another matter and he hoped to finish up as shortly as possible in order to get the time to examine these books and records, and they said that was all right for me to keep them and examine them for such a period of time as I needed to make that examination.

(Reporter's Transcript pages 16 to 44.)